

EXHIBIT A

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ENERPOL, LLC

§

Plaintiff,

§

v.

§ Civil Action No. 2:17-cv-394-JRG

SCHLUMBERGER TECHNOLOGY
CORPORATION,

§ **JURY TRIAL DEMANDED**

Defendant.

§

§

STIPULATION OF INABILITY TO PROVE INFRINGEMENT

Based on the Court’s claim construction of the terms “polymer-continuous liquid phase,” and “continuous liquid phase,” Plaintiff EnerPol, LLC (“EnerPol”) hereby stipulates to noninfringement as to all asserted claims of U.S. Patent No. 6,949,491 (“the ’491 patent”). EnerPol requests that the Court enter a final judgment of noninfringement. The requested relief will conserve judicial and party resources by allowing the parties to forego further litigation of the ’491 infringement claims in this Court, while preserving EnerPol’s right to appeal the Court’s claim construction.

Statement of Undisputed Material Facts and Stipulations

1. EnerPol has alleged that Schlumberger’s BroadBand Sequence Service, OpenPath Sequence Diversion Stimulation Service, StimMORE Diversion Technology, HiWAY Flow-Channel Fracturing Technique and FiberFRAC Fiber-Based Fracturing Fluid Technology treatments (collectively, the “Accused Services”) infringe ’491 patent independent claims 1 and 24, and dependent claims 2-17, 19, 21-23 and 25.

2. Schlumberger raised affirmative defenses and counterclaims of invalidity and unenforceability of the ’491 patent, and counterclaimed for infringement of United States Patent Nos. 7,565,929; 8,183,179; and 8,220,543.

3. On March 15, 2018, the Court issued its Memorandum Opinion and Order construing certain terms of the '491 patent. Dkt. No. 111. That Order construed the term "polymer-continuous liquid phase" in independent claim 1 to mean "polymer in a liquid state that is greater than fifty percent (50%) by volume of the fluid that does the fracturing in the formation." *Id.* at 11. That Order further construed the phrase "continuous liquid phase" in independent claim 24 to have the same meaning. *Id.* at 23.

4. EnerPol stipulates that under the Court's construction of "polymer-continuous liquid phase," EnerPol cannot prevail on the issue of infringement of '491 claim 1 or its dependents as to Schlumberger's Accused Services. EnerPol's Infringement Contentions identify the displacing of degradable thermoplastic polymer, such as polylactide resin (also called polylactic acid or PLA), as meeting the step of displacing a "polymer-continuous liquid phase" from the wellbore into the formation at a pressure greater than the fracturing pressure of the formation. This displacing does not involve displacing polymer in a liquid state that is greater than fifty percent (50%) by volume of the fluid that does the fracturing in the formation. Therefore, under the Court's Claim Construction Order, EnerPol cannot meet the "polymer-continuous liquid phase" limitation of claim 1 or its dependent claims.

5. EnerPol stipulates that under the Court's construction of "continuous liquid phase," EnerPol cannot prevail on the issue of infringement of '491 claim 24 or its dependent claims as to Schlumberger's Accused Services. EnerPol's Infringement Contentions identify the injection of degradable thermoplastic polymer, such as polylactide resin (also called polylactic acid or PLA), in the Accused Services as meeting the step of "inject[ing] the continuous liquid phase into the formation." This injection does not involve injection of polymer in a liquid state that is greater than fifty percent (50%) by volume of the fluid that does the fracturing in the formation. Therefore,

under the Court's Claim Construction Order, EnerPol cannot meet the "continuous liquid phase" limitation of claim 24 or its dependent claims.

Dated: April 5, 2018

Respectfully submitted,

FISH & RICHARDSON P.C.

By: /s/ Robert P. Courtney

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